

Adversary Proceeding Cover Sheet		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS Anthony Lee Darcus		DEFENDANTS Augusta Medical Center	
ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NO.) CARLTON LEGAL SERVICES, PLC 118 MacTanly Place Staunton, VA 24401 (540) 213-0547		ATTORNEYS (IF KNOWN) Neal L. Walters, Esquire Scott/Kroner PLC 418 E. Water Street Charlottesville, Virginia 22902	
PARTY (Check one box only) <input type="checkbox"/> 1. U. S. PLAINTIFF <input type="checkbox"/> 2. U. S. DEFENDANT <input checked="" type="checkbox"/> 3. U. S. NOT A PARTY			
CAUSE OF ACTION (Write a brief statement of cause of action, including all U. S. Statutes involved) Motion to Recover Money or Property, 11 U.S.C. §522(h), 11 U.S.C. §547, 11 U.S.C. §550			
NATURE OF SUIT (Check the one most appropriate box only)			
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S. C. §727 </div> <div style="width: 50%;"> <input checked="" type="checkbox"/> 454 To Recover money or Property </div> <div style="width: 50%;"> <input type="checkbox"/> 458 To obtain approval for the sale both the interest of the estate and of a co-owner in property </div> <div style="width: 50%;"> <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 </div> <div style="width: 50%;"> <input type="checkbox"/> 455 To Revoke an order of confirmation of a Chap. 11 or Chapt. 13 Plan </div> <div style="width: 50%;"> <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court </div> <div style="width: 50%;"> <input type="checkbox"/> 434 To obtain an injunction or other equitable relief </div> <div style="width: 50%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing cause of action </div> <div style="width: 50%;"> <input type="checkbox"/> 498 Other (specify) </div> <div style="width: 50%;"> <input type="checkbox"/> 435 To Determine Validity, Priority or Extent of a Lien or Other Interest in Property </div> <div style="width: 50%;"> <input type="checkbox"/> 457 To subordinate any allowed claim of interest except where such subordination is provided in a plan </div> </div>			
ORIGIN OF PROCEEDINGS (Check one box only)			<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
<input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed Proceeding <input type="checkbox"/> 3. Reinstated or Reopened <input type="checkbox"/> 4 Transferred from Another Bankruptcy Court			
DEMAND N/A	NEAREST THOUSAND \$.0.00	OTHER RELIEF SOUGHT: To recover money as preference	<input type="checkbox"/> JURY DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR(S) Anthony Lee Darcus		BANKRUPTCY CASE NO. 14-50337	
DISTRICT IN WHICH CASE IS PENDING Western District of Virginia		NAME OF JUDGE Honorable Rebecca B. Connelly, Judge	
DIVISIONAL OFFICE Harrisonburg, Virginia			
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE	
FILING FEE (Check one box only) <input type="checkbox"/> Fee attached <input checked="" type="checkbox"/> Fee Not Required <input type="checkbox"/> Fee is Deferred			
Date June 23, 2014	Print Name David L. Meeks, Esquire	Signature of Attorney (Or Plaintiff) <u>/s/ David L. Meeks</u>	

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

IN RE: Anthony Lee Darcus
 Debtor(s)

**MOTION TO RECOVER GARNISHED
EMPLOYMENT INCOME AS A
PREFERENCE**

ANTHONY LEE DARCUS
 Plaintiff/Debtor(s)

Case number: 14-50337

v.

Adversary No. _____

AUGUSTA MEDICAL CENTER

Serve:
Neal L. Walters, Esquire
Scott/Kroner, PLC
418 E. Water Street
Charlottesville, Virginia 22902
 Defendant(s)

COMES NOW the Plaintiff/Debtor, Anthony Lee Darcus , by counsel, pursuant to 11 U.S.C. §522(h), 11 U.S.C. §547, 11 U.S.C. §550, and Bankruptcy Rule 7001, and respectfully represents unto the Court as follows:

1. That this is a core proceeding and this Court has jurisdiction over this issue pursuant to 28 U.S.C. §157 and 11 U.S.C. §1334.
2. That Debtor filed a petition for relief under Chapter 7 of Title 11 of the United States Code on March 28, 2014.
3. From January 31, 2014 through March 28, 2014, the wages of Debtor were garnished in the amount of Two Hundred Ninety Six and 51/100 (\$296.51) pursuant to a garnishment requested by creditor Augusta Medical Center and issued by the Augusta County General District Court. A copy of the garnishment is attached as Exhibit A, and a copy of the garnished paystubs are attached as Exhibit B. Therefore, as required by 11 U.S.C. 522(g), the transfer of the aforesaid money from Debtor to creditor was not voluntary by the debtor.

4. As required by 11 U.S.C. §522(g), the debtor did not conceal the existence of these garnished funds. The garnishment proceeding is properly listed on the Debtor's statement of financial affairs and the garnished funds properly appear on Schedule B and Schedule C of the Debtor's bankruptcy petition.
5. As required by 11 U.S.C. §522(h) and Va. Code §34-17, Debtor has already properly exempted the garnished funds by timely filing a homestead deed with the Circuit Court Clerk's office on April 1, 2014 . A copy of the filed and recorded homestead deed is attached as Exhibit C.
6. As required by 11 U.S.C. §522(h), the aforesaid garnished funds of \$296.51 could have been avoided by the Trustee pursuant to 11 U.S.C. §547 because:
 - a. the transfer was for the benefit of creditor ; and
 - b. the transfer was payment on an antecedent debt established by judgment of the Court entered and the transfer dates occurred between January 31, 2014 and March 28, 2014; therefore, the transfer was for or on an account of an antecedent debt owed by the debtor before the transfer occurred; and
 - c. the transfer was made while the debtor was insolvent (the debtor is presumed insolvent pursuant to 11 U.S.C. §547(f)); and
 - d. the transfer of garnished funds, occurring between January 31, 2014 and March 28, 2014 was within 90 days before the date of the filing of the bankruptcy petition which occurred on March 28, 2014; and
 - e. the transfer enables creditor to receive more than he would have received if
 - i. this case was filed under chapter 7 of the Bankruptcy Code; and
 - ii. the transfer had not been made; and

iii. had received payment on this debt to the extent provided by the provisions of bankruptcy law.

f. Debtor represents to the Court that none of the provisions of 11 U.S.C. §547(c) exist which would have prevented the Trustee to avoid the transfer of the garnished funds.

7. As required by 11 U.S.C. 522(h), the trustee has not attempted to avoid this transfer.

8. Bankruptcy Code 11 U.S.C. §550 permits Debtor to recover garnished funds which have been avoided pursuant to 11 U.S.C. 522(h).

WHEREFORE, Debtor prays that this Court enter an Order, pursuant to 11 U.S.C. §522(h) and 11 U.S.C. §550, which orders creditor to return the garnished funds of \$296.51 to the Debtor's counsel; and for such other and further relief as the Court, in equity, deems appropriate.

/s/ David L. Meeks
Counsel

David L. Meeks, Esquire
Carlton Legal Services, P.L.C.
118 MacTanly Place
Staunton, VA 24401
(540) 213-0547
V.S.B. #65734